

AMENDED IN SENATE JUNE 30, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 898

Introduced by Assembly Member Lieu

February 26, 2009

An act to amend Section 1195 of the Civil Code, to amend Section 3505 of the Commercial Code, to amend Sections 8205, 8208, 8211, and 27287 of, and to add Section 12181 to, the Government Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

AB 898, as amended, Lieu. Notaries public.

(1) Existing law relating to the recording of transfers prohibits a proof of the execution of any of several types of specified instruments, including a grant deed, mortgage, deed of trust, quitclaim deed, or security agreement.

This bill would add a power of attorney to the types of instruments for which a proof of the execution is prohibited and would further prohibit a proof of the execution for any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public's journal.

(2) Existing law provides that a protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs.

The bill would instead provide that a protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public during the course and scope of employment with a financial institution or other

person authorized to administer oaths by the laws of any other state, government, or country in the place where dishonor occurs.

(3) Existing law prescribes the duties of a notary public, including the duty to demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance or nonpayment, and to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries.

The bill would limit this duty to ~~notaries public employed by financial institutions~~ *a notary public employed by a financial institution, during the course and scope of the notary's employment with the financial institution.*

(4) Existing law provides that the protest of a notary public, under his or her hand and official seal, of a bill of exchange or promissory note for nonacceptance or nonpayment, providing specified information, is prima facie evidence of the facts recited therein.

The bill would instead provide that the protest of a notary public ~~employed~~ *acting in the course and scope of employment* by a financial institution, under his or her hand and official seal, of a bill of exchange or promissory note for nonacceptance or nonpayment, providing specified information, is prima facie evidence of the facts recited therein.

(5) Existing law prescribes the maximum fees a notary public may charge for specified services.

The bill would delete the prescribed maximum fees for every protest for the nonpayment of a promissory note or for the nonpayment or nonacceptance of a bill of exchange, draft, or check, for serving every notice of nonpayment of a promissory note or of nonpayment or nonacceptance of a bill of exchange, order, draft, or check, and for recording every protest.

(6) Existing law sets forth the fees the Secretary of State is authorized to charge for the provision of specified business services.

The bill would authorize the Secretary of State's office to refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for any of a number of specified improper purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1195 of the Civil Code is amended to read:

1195. (a) Proof of the execution of an instrument, when not acknowledged, may be made *by* any of the following:

1. By the party executing it, or either of them.
2. By a subscribing witness.
3. By other witnesses, in cases mentioned in Section 1198.

(b) (1) Proof of the execution of a power of attorney, grant deed, mortgage, deed of trust, quitclaim deed, or security agreement is not permitted pursuant to Section 27287 of the Government Code, though proof of the execution of a trustee's deed or deed of reconveyance is permitted.

(2) Proof of the execution for any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public's journal is not permitted.

(c) Any certificate for proof of execution taken within this state may be in the following form, although the use of other, substantially similar forms is not precluded:

State of California)
County of _____) ss.

On ____ (date), before me, the undersigned, a notary public for the state, personally appeared ____ (~~subscribing witness's name~~) (*name of subscribing witness*), personally known to me (or proved to me on the oath of ____ [~~credible witness's name~~] [*name of credible witness*], who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he/she was present and saw ____ (name[s] of principal[s]), the same person(s) described in and whose name(s) is/are subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as (a) party(ies) thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of ____ (name[s] of principal[s]).

1 WITNESS my hand and official seal.

2 Signature_____ (Seal)

3
4 SEC. 2. Section 3505 of the Commercial Code is amended to
5 read:

6 3505. (a) The following are admissible as evidence and create
7 a presumption of dishonor and of any notice of dishonor stated:

8 (1) A document regular in form as provided in subdivision (b)
9 which purports to be a protest.

10 (2) A purported stamp or writing of the drawee, payor bank, or
11 presenting bank on or accompanying the instrument stating that
12 acceptance or payment has been refused unless reasons for the
13 refusal are stated and the reasons are not consistent with dishonor.

14 (3) A book or record of the drawee, payor bank, or collecting
15 bank, kept in the usual course of business that shows dishonor,
16 even if there is no evidence of who made the entry.

17 (b) A protest is a certificate of dishonor made by a United States
18 consul or vice consul, or a notary public during the course and
19 scope of employment with a financial institution or other person
20 authorized to administer oaths by the laws of any other state,
21 government, or country in the place where dishonor occurs. It may
22 be made upon information satisfactory to that person. The protest
23 shall identify the instrument and certify either that presentment
24 has been made or, if not made, the reason why it was not made,
25 and that the instrument has been dishonored by nonacceptance or
26 nonpayment. The protest may also certify that notice of dishonor
27 has been given to some or all parties.

28 SEC. 3. Section 8205 of the Government Code is amended to
29 read:

30 8205. (a) It is the duty of a notary public, when requested:

31 (1) To demand acceptance and payment of foreign and inland
32 bills of exchange, or promissory notes, to protest them for
33 nonacceptance and nonpayment, and, with regard only to the
34 nonacceptance or nonpayment of bills and notes, to exercise any
35 other powers and duties that by the law of nations and according
36 to commercial usages, or by the laws of any other state,
37 government, or country, may be performed by ~~notaries~~ *a notary*.
38 This paragraph applies only to ~~notaries public employed by~~
39 ~~financial institutions~~ *a notary public employed by a financial*

1 *institution, during the course and scope of the notary's employment*
2 *with the financial institution.*

3 (2) To take the acknowledgment or proof of advance health care
4 directives, powers of attorney, mortgages, deeds, grants, transfers,
5 and other instruments of writing executed by any person, and to
6 give a certificate of that proof or acknowledgment, endorsed on
7 or attached to the instrument. The certificate shall be signed by
8 the notary public in the notary public's own handwriting. A notary
9 public may not accept any acknowledgment or proof of any
10 instrument that is incomplete.

11 (3) To take depositions and affidavits, and administer oaths and
12 affirmations, in all matters incident to the duties of the office, or
13 to be used before any court, judge, officer, or board. Any
14 deposition, affidavit, oath, or affirmation shall be signed by the
15 notary public in the notary public's own handwriting.

16 (4) To certify copies of powers of attorney under Section 4307
17 of the Probate Code. The certification shall be signed by the notary
18 public in the notary public's own handwriting.

19 (b) It shall further be the duty of a notary public, upon written
20 request:

21 (1) To furnish to the Secretary of State certified copies of the
22 notary's journal.

23 (2) To respond within 30 days of receiving written requests sent
24 by certified mail from the Secretary of State's office for
25 information relating to official acts performed by the notary.

26 SEC. 4. Section 8208 of the Government Code is amended to
27 read:

28 8208. The protest of a notary public ~~employed~~ *acting in the*
29 *course and scope of employment* by a financial institution, under
30 his or her hand and official seal, of a bill of exchange or promissory
31 note for nonacceptance or nonpayment, specifying any of the
32 following is prima facie evidence of the facts recited therein:

33 (a) The time and place of presentment.

34 (b) The fact that presentment was made and the manner thereof.

35 (c) The cause or reason for protesting the bill.

36 (d) The demand made and the answer given, if any, or the fact
37 that the drawee or acceptor could not be found.

38 SEC. 5. Section 8211 of the Government Code is amended to
39 read:

8211. Fees charged by a notary public for the following services shall not exceed the fees prescribed by this section.

(a) For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate, the sum of ten dollars (\$10) for each signature taken.

(b) For administering an oath or affirmation to one person and executing the jurat, including the seal, the sum of ten dollars (\$10).

(c) For all services rendered in connection with the taking of any deposition, the sum of twenty dollars (\$20), and in addition thereto, the sum of five dollars (\$5) for administering the oath to the witness and the sum of five dollars (\$5) for the certificate to the deposition.

(d) No fee may be charged to notarize signatures on vote by mail ballot identification envelopes or other voting materials.

(e) For certifying a copy of a power of attorney under Section 4307 of the Probate Code the sum of ten dollars (\$10).

(f) In accordance with Section 6107, no fee may be charged to a United States military veteran for notarization of an application or a claim for a pension, allotment, allowance, compensation, insurance, or any other veteran's benefit.

SEC. 6. Section 12181 is added to the Government Code, to read:

12181. The Secretary of State's office may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.

SEC. 7. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952; or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person

1 executing it on behalf of the corporation, or, except for any power
2 of attorney, quitclaim deed, or grant deed other than a trustee's
3 deed or a deed of reconveyance, mortgage, deed of trust, or security
4 agreement, proved by subscribing witness or as provided in
5 Sections 1198 and 1199 of the Civil Code, and the acknowledgment
6 or proof certified as prescribed by law.

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